

Sumter City-County Board of Zoning Appeals

September 14, 2011

BOA-11-20, 535 Brutsch Avenue (City)

The applicant is requesting a variance from the maximum size requirements for an accessory building regarding Article 4, Section G 4.g.2: Exhibit 8A, Accessory Buildings, of the City of Sumter Zoning Ordinance



Appeals - Variance - Special Exception

Sumter City-County Zoning Board of Appeals

September 14, 2011

BOA-11-20, Scott A. Souza – 535 Brutsch Ave. (City)

I. *THE REQUEST*

Applicant: Scott A. Souza

Status of the Applicant: Property Owner.

Request: Applicant is requesting a variance from the maximum allowable square footage for Accessory Buildings per Article 4, Section G; 4.g.2, Exhibit 8A

Location: 535 Brutsch Avenue

Present Use/Zoning: Residence/PD

Tax Map Reference: 185-09-02-003

Adjacent Property Land Use and Zoning: North – Res./PD
South – Res./PD
East – Res./PD
West – Res./PD

II. BACKGROUND

The Applicant is requesting a variance from this Board for the size of an accessory structure in order to finish construction of the building shown in the photograph to the right.

The subject property is located at 535 Brutsch Ave. in the Patriot Landing Subdivision—a neighborhood with restrictive covenants that govern the number and appearance of accessory structures. Currently the property has one 960 sq. ft. two-story accessory



building on-site that was completed in 2010. The accessory structure shown on page one of this report would be the second accessory structure to be located on the property. As planned, the new structure is comprised of a central storage room with front and rear porch areas in addition to two carport structures projecting from the center of the building.

The Applicant has exceeded his allowable square footage for accessory buildings on the subject property. According to Section 4.g.2.b (3) and Exhibit 8A of the Zoning Ordinance, 1,120 sq. ft. is the maximum cumulative size for accessory structures on a 0.61 acre residential lot.

The Applicant has now constructed a 768 sq. ft. accessory structure without a Zoning or Building permit. Thus, the allowable accessory square footage, by Ordinance, has been exceeded by 608 square feet. Therefore, the applicant is requesting a 608 sq. ft. size variance in order to permit and complete construction of the second structure.

History of Property

Recall the BZA history: The Applicant was issued a permit for a two car garage and above loft on October 27, 2008. The Applicant was required to appear before the Board of Appeals on October 14, 2009 for a variance in the size of the structure which exceeded the maximum square footage allowed by Ordinance.

This two-story storage building totaled 1,920 square feet.

The Sumter City-County Zoning Board of Appeals at its meeting on October 14, 2009, voted to deny BOA-09-14 for a variance of 800 additional sq. ft. from what was allowed by the Zoning Ordinance.

At that time, the Applicant was required to convert the two story storage building into what was originally applied for—a two car garage with an above loft. The advantage, by Ordinance is that for bone fide garages, only one story counts toward the calculation of size. This order has been followed resulting in the permitted accessory structure to the right, which measures at 960 sq. ft., leaving the Applicant with 160 sq. ft. of allowable accessory square footage which could be used to construct a second building.



Two Car Garage and 2 Story Loft Completed

On February 24, 2011, the applicant applied for an additional building permit in order to construct a second accessory building totaling 192 sq. ft. in size. The permit was not approved by the Zoning Administrator because it exceeded the 160 sq. ft. left over from the first building constructed. The Applicant was informed of two options: (1) reduce the proposed second accessory building to 160 sq. ft and obtain a building permit or (2) trim the building back to 120 sq. ft. thereby making a permit unnecessary, and the structure would not count toward his accessory building square footage cap. Section 4.g.2.a (3) of the Zoning Ordinance provides for permitting exemptions on buildings under a certain size as follows:

4.g.2. Residential Accessory Structures: Residential accessory structures shall comply with the following conditions:

a. Conditions & Exceptions:

3. Any accessory building 120 sq. ft. in size or smaller (i.e. play houses, well pump houses, and other similar uses) will not be counted as accessory structures however they must comply with accessory structure 5 ft. minimum setbacks and shall be limited to two (2) per parcel.

Additionally, under the 2006 International Building Code (IBC) Section 105.2, one-story detached accessory structures used as tool and storage sheds, playhouses and similar uses that do not exceed 120 sq. ft. in area are exempt from building permit requirements. At that time, the Zoning Administrator understood that option two was acceptable to the Applicant and the Applicant would construct a 120 sq. ft building.

During a follow-up site visit it was discovered that the Applicant was building an open carport, as shown in the photograph on page 1 of this report as well as covered porches on the front and rear of the building making it larger than 120 sq. ft. A stop work order was issued.



Front porch Area & Back Porch Area

The Applicant then appealed the Zoning Administrator’s interpretation on August 10, 2011 concerning how the square footage of this second structure was calculated. The Board upheld the Zoning Administrator’s interpretation of square footage and determined that the building measures 768 sq. ft. in size. This exceeds the Applicant’s allowable square footage by 608 sq. ft. per Section 4.g.2.b (3), and Exhibit 8A referenced below.

The relevant sections of the Zoning Ordinance are as follows:

ARTICLE 4, SECTION G: ACCESSORY BUILDINGS AND USES

4.g.2. Residential Accessory Structures: Residential accessory structures shall comply with the following conditions:

b. Development Standards:

6. **Maximum Size** – the maximum size of residential accessory structures shall be governed by Exhibit 8A, and shall be based on the gross acreage of the parcel of land on which it is located.

EXHIBIT 8A

Maximum square footage of residential accessory structures based on gross acreage

| Acreage | 0 | 0.1 | 0.2 | 0.3 | 0.4 | 0.5 | 0.6 | 0.7 | 0.8 | 0.9 |
|---------|--------------------|------|------|------|------|------|------|------|------|------|
| **<0.5 | See note 1 | | | | | | | | | |
| 0.5 | 1100 | 1120 | 1140 | 1160 | 1180 | - | - | - | - | - |
| 1.0 | 1200 | 1225 | 1250 | 1275 | 1300 | 1325 | 1350 | 1375 | 1400 | 1425 |
| 2.0 | 1450 | 1475 | 1500 | 1525 | 1550 | 1575 | 1600 | 1625 | 1650 | 1675 |
| 3.0 | 1700 | 1725 | 1750 | 1775 | 1800 | 1825 | 1850 | 1875 | 1900 | 1925 |
| 4.0 | 1950 | 1975 | 2000 | 2025 | 2050 | 2075 | 2100 | 2125 | 2150 | 2175 |
| 5.0 | 2200 | 2225 | 2250 | 2275 | 2300 | 2325 | 2350 | 2375 | 2400 | 2425 |
| 6.0 | 2450 | 2475 | 2500 | 2525 | 2550 | 2575 | 2600 | 2625 | 2650 | 2675 |
| 7.0 | 2700 | 2725 | 2750 | 2775 | 2800 | 2825 | 2850 | 2875 | 2900 | 2925 |
| 8.0 | 2950 | 2975 | 3000 | 3025 | 3050 | 3075 | 3100 | 3125 | 3150 | 3175 |
| 9.0 | 3200 | 3225 | 3250 | 3275 | 3300 | 3325 | 3350 | 3375 | 3400 | 3425 |
| >= 10.0 | Exempt, see note 2 | | | | | | | | | |

The highlighted area on the table notes the maximum square footage for Mr. Souza’s lot size.

ACCESSORY USE

Accessory buildings, **including** Garages, **carports**, animal shelters, Storage sheds, etc.

CONDITIONS

See Section 4.g.2. Where the accessory use is a combined garage and living space (or office use), the second story of the accessory use, when used as a living space or office use, shall not count against the square gross floor area limit as established in Exhibit 8A. The number of accessory structures shall not exceed two in

any zoning district. **The maximum floor area established in Exhibit 8A is the total floor area of all accessory structures; this means that each residential parcel is entitled to a total of two (2) non-exempt accessory structures with a combined total floor area not to exceed the square footage limitations established in Exhibit 8A.** No accessory use shall be located in any required bufferyard.

Patriot Landing Restrictive Covenants

As per Section 6-29-1145 of South Carolina State Law, *“If a Planning agency has notice of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity... the local planning agency must not issue the permit...”*

Staff has had discussions with the Developer of the subdivision since this matter has been before this Board numerous times for different requests. The Developer has confirmed that the Restrictive Covenants are still in place and are enforceable. A copy of the restrictive covenants has been made part of this report for informational purposes. The applicable covenants in this case are as follows:

Restrictive Covenant No. 1 (Page 1 of 8 & Page 2 of 8)

No structure shall be erected on any lot other than one single-family dwelling, and one attached or detached garage, and no use shall be made of the property or of any right or privilege appurtenant thereto, other than for private residential purposes of a single family. No building, outbuilding, fence, wall, garage, or other structure shall be commenced, erected, or maintained upon any of the lots in the Subdivision until the complete plans and specifications showing the nature, kind, shape, height, square footage, materials, and location of the same have been submitted and approved, in writing as to the harmony of external design, materials, siting and location in relation to the surrounding structure and topography. An architectural review committee composed of three (3) members, namely, the Declarant, Tyler B. Dunlap, Jr., Deena Mark and R. Kirk McLeod, III must review and approve all such plans and specifications. In the event said committee fails to approve such requested design, materials, siting and location within thirty (3) days after said plans and specifications have been submitted to it, then such plans, design and specifications shall be deemed disapproved...

Restrictive Covenant No. 26 (Page 2 of 8)

The covenants and restrictions of this Declaration shall run with and bind the land and all parties acquiring same as well as their successors in title, for a term of twenty (2) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This declaration may be amended at any time by the Declarant, until the last lot in said subdivision has been sold and thereafter only by an instrument signed by the owners of not less than seventy-five (75%) percent of the Lots in said Subdivision, regardless of when done. Any amendment must be in writing and recorded in the Office of the Register of Deeds of Sumter County.

According to the developer there have been no amendments to these covenants and developer still owns 3 lots. Therefore, the proposed structure is in conflict with the existing Restrictive Covenants. In accordance with Section 6-29-1145 of South Carolina State Law, because the Zoning Administrator now has notice of the covenants, if the Board grants this variance request, the applicant will still be required to receive approval from the Developer before Zoning can issue a zoning approval.

III. FOUR PART TEST

In order to grant this size variance, the request must meet all parts of a State mandated four-part test. When reviewing a variance request, the Board may not grant a variance that would do the following:

- Allow the establishment of a use not otherwise permitted in a zoning district;
- Extend physically a nonconforming use of land;
- Change zoning district boundaries shown on the Sumter City-County Official Zoning Map.

The fact that a property may be utilized more profitably should a variance be granted shall not be considered grounds for approving a variance request.

1) There are extraordinary and exceptional conditions pertaining to the particular piece of property.

There are no extraordinary or exceptional conditions pertaining to this property. The parcel is of a similar size and shape to the adjacent parcels and other lots throughout this subdivision.

2) These conditions do not generally apply to other property in the vicinity.

All of the lots in the Patriot Landing Subdivision are similar in size and are held to the same size restrictions for their accessory structures. Additionally all properties within this subdivision are subject to the same restrictive covenants.

3) Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.

This would not prohibit use of this property. There is an existing residence and a two story accessory building currently on the property in conformance with the Zoning Ordinance. Additionally, if the applicant receives appropriate approval under the subdivision's restrictive covenants, the applicant still has 160 sq. ft. left from the Ordinance allowed maximum square footage in order to construct a second accessory building.

- 4) **The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.**

Staff believes this variance could be detrimental to the neighborhood. Staff finds no hardship established here and if the Applicant's request is approved to exceed the allowed maximum square footage then what will prevent other property owners from requesting the same? All residential property owners are held to fully comply with the same Accessory Structure Ordinance, and all property owners in the Patriot Landing Subdivision are subject to the same restrictive covenants.

IV. STAFF RECOMMENDATION:

Staff recommends denial of this variance due to the request not meeting all four parts of the Four-Part Test as outlined in the City Zoning Ordinance.

IV. DRAFT MOTIONS for BOA-11-20

- A. I move that the Zoning Board of Appeals approve BOA-11-20, on the following findings of fact and conclusions:
- B. I move that the Zoning Board of Appeals deny BOA-11-20, subject to the conclusions contained in the draft order, dated September 14, 2011 attached as Exhibit 1.
- C. I move that the Zoning Board of Appeals enter an alternative motion for BOA-11-20.

IV. ZONING BOARD OF APPEALS – SEPTEMBER 14, 2011

The Sumter City-County Board of Appeals at its meeting on Wednesday, September 14, 2011, voted to deny this request subject to the findings of facts and conclusions listed on exhibit 1.

Exhibit 1
Order on Variance Application
Sumter Board of Appeals

BOA-11-20, 535 Brutsch Ave. (City)
September 14, 2011

Date Filed: September 14, 2011

Permit Case No. BOA-11-20

The Sumter Board of Appeals held a public hearing on Wednesday, September 14, 2011 to consider the appeal of Scott A. Souza, 535 Brutsch Ave. Sumter, SC 29154 for a variance from the strict application of the City Zoning Ordinance as set forth on the Form 3 affecting the property described on Form 1 filed herein. After consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions.

- 1) There are extraordinary and exceptional conditions pertaining to the particular piece of property.**

There are no extraordinary or exceptional conditions pertaining to this property. The parcel is of a similar size and shape to the adjacent parcels and other lots throughout this subdivision.

- 2) These conditions do not generally apply to other property in the vicinity.**

All of the lots in the Patriot Landing Subdivision are similar in size and are held to the same size restrictions for their accessory structures. Additionally all properties within this subdivision are subject to the same restrictive covenants.

- 3) Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.**

Strict application of the Ordinance does not prohibit or unreasonably restrict utilization of this property. There is an existing residence and a two-story accessory building currently on the property in conformance with the Zoning regulations and current restrictive covenants. Additionally, if the applicant receives appropriate approval under the subdivision's restrictive covenants, the applicant may construct an additional 160 sq. ft. accessory building.

- 4) **The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.**

This variance could be detrimental to the neighborhood. The Board finds no hardship established. All residential property owners are held to fully comply with the same Accessory Structure Ordinance, and all property owners in the Patriot Landing Subdivision are subject to the same restrictive covenants.

THE BOARD, THEREFORE, ORDERS that the appeal is ☒ **DENIED** – ☐ **GRANTED**, subject to the following conditions: None.

Date issued: _____

Chairman

Date mailed to parties in interest: _____

Secretary

Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.